IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.190 OF 2006

DATE OF DECISION: FEBRUARY 08, 2007

Pardeep Kumar Sharma

.....Petitioner

VERSUS

State/Union Territory of Chandigarh.

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Ramesh Sharma, Advocate,
for the petitioner.

Mr. D. D. Sharma, Advocate,
for the respondent.

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RANJIT SINGH, J. (ORAL)

The petitioner is in revision before this Court against the order of his conviction for an offence under Section 411 of Indian Penal Code. The petitioner, who was charged and found guilty of offence of receiving stolen property by the trial Court vide judgment dated 19.4.2004, was ordered to be released on probation for one year coupled with direction to pay the costs of proceedings amounting to Rs.250/-. He filed an appeal against this order, releasing him on probation, which was disposed of on 1.10.2005 by the Appellate Court by up-holding the conviction and so also the order releasing him on probation. The Appellate Court found that the period of probation had already expired and as such, held that there was no justification to interfere with

the order passed regarding release of petitioner on probation. The Appellate Court, however, set-aside the order whereby the petitioner was directed to deposit Rs.250/- as litigation costs. The said amount, recovered from the petitioner, was ordered to be refunded. The petitioner, who is a Government employee in the Irrigation Department of Rajasthan Government, has filed this revision petition, impugning the order of his conviction.

Learned counsel for the petitioner has submitted that on the basis of his conviction, the petitioner has been dismissed from service on 30.1.2005. The petitioner has already impugned this order by filing a writ petition mainly on the ground that he can not be made to suffer the consequences of his conviction as he is released on probation. Counsel would further contest the order of conviction on merits of the case. As per the counsel, the Appellate Court did not properly appreciate the evidence, being influenced by the order of releasing the petitioner on probation for a period, which had already expired by the time the appeal was heard. Learned counsel would refer to the evidence and say that the petitioner used to come and stay in Kisan Bhawan where he is allegedly found in possession of 9 old curtains stated to have been stolen from Room No.308 on the third floor of said Kisan Bhawan. A perusal of the record would show that the petitioner was found occupying a room in Kisan Bhawan by Manjit Singh, Receptionist, who was on night duty, with the allegation that he was not carrying any receipt for booking of the room. It is further alleged that on checking of the bag stated to be that of the accused, 9 curtains belonging to Kisan Bhawan were recovered. The matter being reported to Paramjit Singh, Manager, ultimately reached

police, leading to registration of FIR, followed by his trial, conviction and release on probation.

On the other hand, Mr.Sharma, learned counsel appearing for Union Territory, has supported the judgment of conviction. He would further say that by ordering the release of the petitioner on probation, he has already been shown leniency. As per the counsel, there is sufficient evidence produced on record to substantiate the case of prosecution and, hence, no interference may be called for in this revision.

Learned counsel for the petitioner would then submit that it will be too far-fetched to accept that the petitioner was able to occupy a room in Kisan Bhawan without having a booking and without knowledge or connivance of the concerned officials working at that time. He would be justified in submitting that the petitioner used to occupy the room without showing his name on the record by accepting some money under hand. Though, this aspect is not found reflected either in evidence or on record or even from the statement of the petitioner made under Section 313 Cr.P.C. yet it can not be completely ignored. However, much may not depend on this.

It is noticed that no allegation of theft of curtains is made against the petitioner. Even no one is charged or tried for committing theft of the old curtains hung in room No.308 of Kisan Bhawan. The petitioner was only proceeded against for having been found in possession of stolen property. Who stole those curtains; who had put these curtains into a bag; and from where these were recovered are the questions which are not finding answer. Investigation and evidence seems to be silent on these aspects. It is also not

sufficiently established from the evidence on record that the bag from which the curtains were recovered belonged to the petitioner. It is simply brought out that curtains were recovered from a bag without specifically proving that this bag was of the petitioner. In a criminal trial, prosecution must prove its case beyond any reasonable doubt to seek conviction of any accused person. If there is any reasonable doubt on any of the ingredients of the offence, benefit thereof must accrue to an accused not as a matter of any grace but as a matter of his legal right. Having regard to these facts as noticed, it can be said that though the evidence led by the prosecution would go to show that there may be a strong suspicion that the curtains were stolen and that the stolen property was recovered, but suspicion howsoever strong is no substitute for a proof. Even no independent witness was examined to show that the bag belonged to the petitioner or that the said curtains were recovered from the bag, which belonged to the petitioner or that these could be considered to be in possession of the petitioner. Even otherwise, the allegation against the petitioner is of having been found in possession of 9 old curtains, which were found missing from a room in Kisan Bhawan. The value of these curtains is not brought on record. Something may be indicative in this regard from the amount of costs imposed on the petitioner by the trial Court. At the most, it may be a case, which may attract the provisions of Section 95 of the Indian Penal Code. This Section says that nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm. The allegation would lead to show

that the petitioner had some old curtains whose value is not assessed or brought on record. This, as such, would be a case where the harm caused may be so slight as that a person of ordinary sense and temper may not normally complain in this regard. Should the petitioner be made to suffer the consequences of this action to an extent that he would loose his job and all those benefits like pension etc. for this act? Taking the totality of the circumstances in view and the fact that the prosecution was not able to fully discharge the onus resting on its shoulders, the case may call for interference. Considering these aspects, I am of the view that prosecution was not able to establish this case beyond reasonable doubt. The benefit of doubt as such must go to the petitioner.

The present petition is accordingly allowed and conviction of the petitioner is set-aside. He shall stand relieved of the consequences of trial.

February 08, 2007 **(RANJIT SINGH)**
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